STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
John H. Tippets, Director

December 27, 2019

Ms. Kelly Urbanek, Chief
U.S. ACOE Regulatory Division
Walla Walla District
720 East Park Boulevard, Suite 245
Boise, Idaho 83712

RE: FINAL §401 Water Quality Certification for reissuance of Regional General Permit 27 (RGP-27)

Ms. Urbanek:

The Idaho Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers' Regional General Permit 27 (RGP-27), announced for public notice on October 29, 2019, and has subsequently issued a final 401 certification. On November 29, 2019, a draft RGP-27 certification was posted to DEQ's website for a 21-day public comment period. DEQ did not receive any comments. No notable revisions have been made to the final enclosed 401 certification from the previous certification issued March 2015.

Please find the enclosed final certification. Questions or comments regarding this document may be directed to Loren Moore at (208) 373-0158 or via email: loren.moore@deq.idaho.gov.

Sincerely,

Mary Anne Nelson, PhD
Surface and Wastewater Division Administrator

MAN:LM:lf

Enclosure

cc: Duane Mitchell, ACOE Walla Walla District Office
Dan Redline, DEQ Coeur D'Alene Regional Office
Mark Cecchini-Beaver, Idaho Attorney General's Office

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

December 27, 2019

404 Regional General Permit Number: Army Corps of Engineers Regional General Permit No. 27 (RGP-27)

Project Location and Receiving Water Bodies: Lake Pend Oreille, the Pend Oreille River and certain tributaries inundated by the summer pool elevation of 2062.5 feet (NGV Datum) in Bonner and Kootenai counties, Idaho

Excluded Water Bodies: Tributaries to Lake Pend Oreille and the Pend Oreille River, including (1) mouths of Gold Creek, West Gold Creek, Granite Creek, Trestle Creek, Lightning Creek, Strong Creek (near Hope, Idaho) and the Priest River for a radius of 100 yards; (2) the Clark Fork Delta from the confluence of Lightning Creek and the Clark Fork River; (3) Denton Slough; (4) the Pack River from the Pack River Flats, north of Trestle Creek on the east and north of Sunnyside Sportsman Access on the west; (5) Morton Slough, including the left bank (east shoreline) of the Pend Oreille River; (6) Cocolalla Slough/Creek, upstream from the Spokane International Railroad Bridge across the slough; and (7) Scenic Bay

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

DEQ has reviewed the regional general permit information presented in the public notice for the proposed reissuance of the permit, published October 29, 2019. DEQ has also reviewed and considered other materials and information related to the proposed activity, including, but not limited to, the Idaho Lake Protection Act, Idaho Code § 58-1301; the Idaho Department of Lands' Rules for the Regulation of the Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04; and the existing RGP-27, effective April 2, 2015.

Based on our review and consideration of the information listed above, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

This regional permit is for the construction, repair or replacement of non-commercial piers and floating docks with a total deck area of 700 square feet or less for a single-use and 1,100 square feet or less for a joint-use pier or floating dock. This permit also covers the construction, repair or replacement of non-commercial marine launching rails, mooring piles, portable boat lift stations, small diameter waterline intakes, and mooring buoys.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

Receiving Water Body Level of Protection

Activities authorized under this Regional General Permit will be located on three main assessment units (AUs) within the Pend Oreille Lake Subbasin (IDAPA 58.01.02.110.05).

Projects authorized under the proposed permit may be located on **Pend Oreille Lake ID17010214PN018L_0L**. This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. According to DEQ's 2016 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The cold water aquatic life and salmonid spawning uses are not fully supported due to phosphorus, mercury, and flow regime alterations. The contact recreation beneficial use is also not fully supported; due to mercury impairment. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for both the aquatic life and contact recreation uses.

Projects may also be located on the **Pend Oreille River ID17010214PN002_08** (Pend Oreille River – Pend Oreille Lake to Priest River) or **ID17010214PN001_08** (Pend Oreille River – Priest River to Albeni Falls Dam). These AUs have the following designated beneficial uses: cold water aquatic life, primary contact recreation, and domestic water supply. According to DEQ's 2016 Integrated Report, these AUs are not fully supporting one of their assessed uses. The cold water aquatic life use is not fully supported due to temperature and dissolved gas supersaturation. The contact recreation beneficial use is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.b). DEQ has determined that the quality of water in the Pend Oreille River exceeds levels necessary to support recreation in and on the water. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life beneficial use and Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I, for the contact recreation use.

In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

The only pollutant of concern associated with this project is sediment. However, sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses, and it is therefore unnecessary for DEQ to conduct additional Tier II antidegradation analysis.

Excluded Water Bodies

The following areas have been excluded from RGP-27 permit coverage and the scope of this certification:

1. Areas within ½ mile of a bald eagle nest;
2. A 100-yard radius from the mouths of Gold Creek (ID17010214PN021_03); West Gold Creek (ID17010214PN022_02); Granite Creek (ID17010214PN027_03); Trestle Creek (ID17010214PN030_02); Lightning Creek in the Lower Clark Fork Subbasin (ID17010213PN010_04); Strong Creek near Hope, ID (ID17010214PN029_02) and the Priest River in the Priest Subbasin (ID17010215PN001_05);
3. Areas of the permit that provide important wildlife habitat, including locations suitable for kokanee spawning, as follows:
    a) The Clark Fork Delta, from the confluence of Lightening Creek and the Clark Fork River, west to the range line between Range 1E and Range 2E (ID17010213PN001_08);

b) Denton Slough, located in Sections 7, 18 & 19, T 56N, R 2E (ID17010214PN018L_0L);

c) Pack River, including the Pack River Flats, north of Trestle Creek on the east, and north of Sunnyside Sportsman Access on the west (ID17010214PN031_04);

d) Morton Slough, including the east shoreline of the Pend Oreille River from the half section line of Section 16, T 56N, R 3W, south to the south section line of Sec. 21, T 56N, R 3W (ID17010214PN002_02L);

e) Cocolalla Slough/Creek, upstream from the Spokane International Railroad Bridge across the slough (ID17010214PN012_04); and

f) Scenic Bay of Lake Pend Oreille (ID17010214PN018_02).

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses. Narrative limitations in RGP-27 address best management practices aimed at minimizing impacts to the aquatic environment and are focused on sediment and turbidity impacts including: shoreline and riverbank vegetation protection and restoration, erosion and sediment controls, soil stabilization requirements, pollution prevention measures, prohibited discharges, and wildlife and habitat considerations. The majority of excavation and fill work will be performed in the dry, including the installation of piers, floating docks, launching rails and mooring piles. Working in a dry state will minimize the project's impacts to surface waters and ensure the conditions for sediment stabilization are met in the certification and support compliance with the Tier I provisions of Idaho's WQS.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). A TMDL is currently being developed for the Boyer Slough and its tributaries. Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The AUs in which these activities are authorized to occur are not impaired for sediment; therefore, there are no relevant sediment TMDLs for the water bodies covered by this permit.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with RGP-27 and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. Portable boat and jet ski lift stations shall be installed and operated in a manner that precludes any discharge to waters of the State.

Fill Material

9. Fill material subject to suspension shall be free of organic and easily suspended fine material. The fill material to be placed shall be clean material only and may include

native material, concrete, sand, gravel, grout or epoxy. When sand is utilized as fill material, the appropriate BMPs shall be implemented to ensure sand will not be easily dispersed (e.g., filter fabric anchored over the sand or other confinement).

10. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
11. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
12. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

Turbidity

13. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*

    Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017
14. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).
15. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.

Erosion and Sediment Control

16. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*. Other resources may also be used for selecting appropriate BMPs.
17. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
18. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
19. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.

20. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
21. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
22. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
23. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
24. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
25. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the river channel during construction, during periods prior to revegetation, or after vegetation is established.
26. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
27. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

In-water Work

28. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
29. Construction affecting the bed or banks shall take place only during periods of low flow or maximum annual drawdown (low pool).
30. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.
    a. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
31. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
32. Activities in spawning areas must be avoided to the maximum extent practicable. Prior to the start of in-water work, the applicant shall contact the local Idaho Department of Fish and Game (IDFG) regional office (https://idfg.idaho.gov/offices) to determine if spawning areas are present in the work area, and if so, the applicant will work with IDFG to determine an appropriate work window so as not to disturb spawning fish, incubating fish eggs, or newly emerged fry.

33. Work in waters of the State shall be restricted to areas specified in the application.
34. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
35. Activities that include constructing and maintaining intake structures must include adequate fish screening devices with a minimum mesh size of ¼ inch to minimize fish entrainment or capture.
36. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) by a qualified fisheries biologist with credentials approved by IDFG. A collection permit must be obtained from IDFG and the applicant may consult with IDFG to coordinate fish salvage.
37. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Vegetation Protection and Restoration

38. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
39. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
40. Fencing and other barriers should be used to mark the construction areas.
41. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
42. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredge Material Management

43. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

Management of Hazardous or Deleterious Materials

44. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
45. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
46. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
47. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a

water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.

48. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
49. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
    a. Make every reasonable effort to abate and stop a continuing spill.
    b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
    c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802). **Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017**
    d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

Treated Wood

50. DEQ's *Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments* must be considered when using treated wood materials in the aquatic environment. Within this guidance document DEQ references the *Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments*. This document provides recommended guidelines for the production and installation of treated wood products destined for use in sensitive environments.

Required Notification

Permittees constructing an activity covered under RGP-27 shall submit information listed in the permit Sections VI.A, B, and C to the Idaho Department of Environmental Quality:

Coeur d'Alene Regional Office
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814
(208) 769-1422
Attn: Chantilly Higbee,
Compliance Officer

DEQ Headquarters
1410 North Hilton Street
Boise, Idaho 83706
(208) 373-0502
Attn: Loren Moore,
401 Certification Lead

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Loren Moore at (208) 373-0158 or via email at loren.moore@deq.idaho.gov.

Mary Anne Nelson, PhD
Surface and Wastewater Division Administrator
Idaho Department of Environmental Quality